HONOR ROLL

386th Session, Basic Law Enforcement Academy, February 5 through April 23, 1992

President:	*Officer Nathaniel T. Lloyd - King County Police Department*
Best Overall:	*Officer Kurtis M. Wayerski - King County Police Department*
Best Academic:	*Officer Kurtis M. Wayerski - King County Police Department*
Best Firearms:	*Officer Jonathan Lucas - Seattle Police Department*
Best Mock Scenes:	*Officer George Jacobowitz - Normandy Park Police Department*

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1992 WASHINGTON LEGISLATION -- PART I

We have attempted to cover most of the significant 1992 Washington legislative enactments in this month's LED. Remaining 1992 legislative enactments of interest (see list at page 20) will be covered in next month's LED. Our style for presenting most of the legislative enactments is to present the statutory language as it will exist on the effective date of the legislation. In a few circumstances we have shown the changes made by amendatory legislation in "bill-draft form": this means for these enactments that deletions are shown by line-outs and parentheses, while additions are shown by underlines.

PORNOGRAPHY

CHAPTER 5 (HB 2554)

Effective Date: June 11, 1992 (various others)

Amends various sections of the state pornography statute at chapter 9.68 RCW to clarify that the labeling requirements apply to "sound recordings", along with other "erotic material", as defined in RCW 9.68.050(2).

RECREATIONAL BOATING LAWS RECODIFICATION

CHAPTER 15 (HB 2543)

Effective Date: June 11, 1992

Re-codifies (re-numbers) in Title 88 RCW various recreational boating laws currently codified in Titles 88, 91, and 43 RCW. Included in the recodification are the laws relating to boating while intoxicated and water ski safety, among others. Codification in chapter 88.12 will be supplied by the State Code Reviser sometime in the fall.

BOATING OFFENSE (INTERSTATE) COMPACT

CHAPTER 33 (SB 6199)

Effective Date: June 11, 1992

Adds a new chapter to Title 88 RCW enacting the Boating Offense Compact into law. The key provision of this interstate compact establishes concurrent jurisdiction over boating conduct as follows (this applies only where the other state has also adopted the Boating Offense Compact -- we have been informed by Senate committee staff that Oregon has already adopted the Compact and that Idaho will likely adopt it in 1993):

> (1) If conduct is prohibited by two adjoining party states, courts and law enforcement officers in either state who have jurisdiction over boating offenses committed where waters form a common interstate boundary have concurrent jurisdiction to arrest, prosecute, and try offenders for the prohibited conduct committed anywhere on the boundary water between the two states.
>
> (2) This compact does not authorize:
>
> (a) Prosecution of any person for conduct that is unlawful in the state where it was committed, but lawful in the other party state;
>
> (b) A prohibited conduct by the party state.

LANDLORD-TENANT ACT

CHAPTER 38 (SB 5986)

Effective Date: June 1, 1992

Section 1 describes the purpose of this act amending the Landlord-Tenant Act (chapter 59.18 RCW) and summarizes the contents of the amendatory act.

Section 2 amends RCW 59.18.130 by adding the following tenant duty:

> (8) Not engage in any activity at the rental premises that is:
> (a) Imminently hazardous to the physical safety of other persons on the premises; and
> (b) (i) Entails physical assaults upon another person which result in an arrest; or
> (ii) Entails the unlawful use of a firearm or other deadly weapon as defined in RCW 9A.04.110 which results in an arrest, including threatening another tenant or the landlord with a firearm or other deadly weapon under section 5 of this act. Nothing in this subsection (8) shall authorize the termination of tenancy and eviction of the victim of a physical assault or the victim of the use or threatened use of a firearm or other deadly weapon; and

Section 3 amends RCW 59.18.180 to add the following provision:

> If activity on the premises that creates an imminent hazard to the physical safety of other persons on the premises as defined in RCW 59.18.130(8) is alleged to be the basis for termination of the tenancy, and the tenant is arrested as a result of this activity, then the compliance provisions of this section do not apply and the landlord may proceed directly to an unlawful detainer action against the tenant who

was arrested for this activity.

A landlord may not be held liable in any cause of action for bringing an unlawful detainer action against a tenant for drug-related activity or for creating an imminent hazard to the physical safety of others under this section, if the unlawful detainer action was brought in good faith. Nothing in this section shall affect a landlord's liability under RCW 59.18.380 to pay all damages sustained by the tenant should the writ of restitution be wrongfully sued out.

Section 4 amends RCW 59.18.075 to add the following provision:

(2) Any law enforcement agency which arrests a tenant for threatening another tenant with a firearm or other deadly weapon, or for some other unlawful use of a firearm or other deadly weapon on the rental premises, or for physically assaulting another person on the rental premises, shall make a reasonable attempt to discover the identity of the landlord and notify the landlord about the arrest in writing, at the last address listed in the property tax records and at any other address known to the law enforcement agency.

Section 5 adds a new section to chapter 59.18, reading as follows:

If a tenant notifies the landlord that he or she, or another tenant who shares that particular dwelling unit has been threatened by another tenant, and:

(1) The threat was made with a firearm or other deadly weapon as defined in RCW 9A.04.110; and

(2) The tenant who made the threat is arrested as a result of the threatening behavior; and

(3) The landlord fails to file an unlawful detainer action against the tenant who threatened another tenant within seven calendar days after receiving notice of the arrest from a law enforcement agency; then the tenant who was threatened may terminate the rental agreement and quit the premises upon written notice to the landlord without further obligation under the rental agreement.

A tenant who terminates a rental agreement under this section is discharged from payment of rent for any period following the quitting date, and is entitled to a pro rata refund of any prepaid rent, and shall receive a full and specific statement of the basis for retaining any of the deposit together with any refund due in accordance with RCW 59.18.280.

Nothing in this section shall be construed to require a landlord to terminate a rental agreement or file an unlawful detainer action.

Section 6 adds a new section to chapter 59.18, reading as follows:

If a tenant is threatened by the landlord with a firearm or other deadly weapon as defined in RCW 9A.04.110, and the threat leads to an arrest of the landlord, then the tenant may terminate the rental agreement and quit the premises without further obligation under the rental agreement. The tenant is discharged from

payment of rent for any period following the quitting date, and is entitled to a pro rata refund of any prepaid rent, and shall receive a full and specific statement of the basis for retaining any of the deposit together with any refund due in accordance with RCW 59.18.280.

Section 7 adds a new section to chapter 59.18 reading as follows:

If a tenant notifies the landlord in writing that:

(1) He or she has a valid order for protection under chapter 26.50 RCW; and

(2) The person to be restrained has violated the order since the tenant occupied the dwelling unit; and

(3) The tenant has notified the sheriff of the county or the peace officers of the municipality in which the tenant resides of the violation; and

(4) A copy of the order for protection is available for the landlord;

then the tenant may terminate the rental agreement and quit the premises without further obligation under the rental agreement. A tenant who terminates a rental agreement under this section is discharged form the payment of rent for any period following the quitting date, and is entitled to a pro rata refund of any prepaid rent, and shall receive a full and specific statement of the basis for retaining any of the deposit together with any refund due in accordance with RCW 59.18.280.

Section 8 adds a new section to chapter 59.18 RCW, reading as follows:

(1) A landlord may, upon the execution of a writ of restitution by the sheriff, enter and take possession of any property of the tenant found on the premises and store the property in any reasonably secure place. If, however, the tenant or the tenant's representative objects to the storage of the property, the property shall be deposited upon the nearest public property and may not be moved and stored by the landlord. If the tenant is not present at the time the writ of restitution is executed, it shall be presumed that the tenant does not object to the storage of the property as provided in this section. RCW 59.18.310 shall apply to the moving and storage of a tenant's property when the premises are abandoned by the tenant.

(2) Property moved and stored under this section shall be returned to the tenant after the tenant has paid the actual or reasonable drayage and storage costs, whichever is less, or until it is sold or disposed of by the landlord in accordance with subsection (3) of this section.

(3) Prior to the sale or disposal of property stored pursuant to this section with a cumulative value of over fifty dollars, the landlord shall notify the tenant of the pending sale or disposal. After forty-five days from the date the notice of the sale or disposal is mailed or personally delivered to the tenant, the landlord may sell or dispose of the property, including personal papers, family pictures, and keepsakes.

If the property that is being stored has a cumulative value of fifty dollars or less, then the landlord may sell or dispose of the property in the manner provided in this

section, except for personal papers, family pictures, and keepsakes. Prior to the sale or disposal of property stored pursuant to this section with a cumulative value of fifty dollars or less, the landlord shall notify the tenant of the pending sale or disposal. The notice shall either be mailed or personally delivered to the tenant, the landlord may sell or dispose of the property.

The landlord may apply any income derived form the sale of the tenant's property against moneys due the landlord for drayage and storage of the property. The amount of sale proceeds that the landlord may apply towards such costs may not exceed the actual or reasonable costs for drayage and storage of the property, whichever is less. Any excess income derived from the sale of such property shall be held by the landlord for the benefit of the tenant for a period of one year from the date of the sale. If no claim is made or action commenced by the tenant for the recovery of the excess income prior to the expiration of that period of time, then the balance shall be treated as abandoned property and deposited by the landlord with the department of revenue pursuant to chapter 64.29 RCW.

(4) Nothing in this section shall be construed as creating a right of distress for rent.

(5) When serving a tenant with a writ of restitution pursuant to RCW 59.12.100 and 59.18.410, the sheriff shall provide written notice to the tenant that: (a) Upon execution of the writ, the landlord may store the tenant's property; (b) if the property is stored, it may not be returned to the tenant unless the tenant pays the actual or reasonable costs of drayage and storage, whichever is less; (c) if the tenant objects to storage of the property, it will not be stored but will be placed on the nearest public property; and (d) if the tenant is not present at the time of the execution of the writ, it shall be presumed the tenant does not object to storage of the property.

Section 10 adds a new section to chapter 7.48 RCW, reading as follows;

The unlawful use of a firearm or other deadly weapon by a person in, or adjacent to his or her dwelling, that imminently threatens the physical safety of other people in the adjacent area, so as to essentially interfere with the comfortable enjoyment of their residences, is a nuisance and may be abated, and the person who unlawfully used the firearm or deadly weapon is subject to the punishment provided in this chapter. This section does not apply unless the person who unlawfully used the firearm or other deadly weapon is arrested for this activity.

TRANSPORTATION (SCHOOL BUS) SAFETY -- OVERTAKING SCHOOL BUS

CHAPTER 39 (SB 5116)

Effective Date: June 11, 1992

Section 1 adds a section to chapter 46.61 RCW reading as follows:

If a law enforcement officer investigating a violation of RCW 46.61.370 **[Unlawfully passing a stopped school bus loading or unloading students -- LED Ed.]** has reasonable cause to believe that a violation has occurred, the officer may request the owner of the motor vehicle to supply information identifying the

driver of the vehicle at the time the violation occurred. When requested, the owner of the motor vehicle shall identify the driver to the best of the owner's ability. The owner of the vehicle is not required to supply identification information to the law enforcement officer if the owner believes the information is self-incriminating. **[Bracketed language by LED Ed.]**

Section 2 adds a section to chapter 46.61 reading as follows:

(1) The driver of a school bus who observes a violation of RCW 46.61.370 may prepare a written report on a form provided by the state patrol or another law enforcement agency indicating that a violation has occurred. The driver of the school bus or a school official may deliver the report to a law enforcement officer of the state, county, or municipality in which the violation occurred but not more than seventy-two hours after the violation occurred. The driver shall include in the report the time and location at which the violation occurred, the vehicle license plate number, and a description of the vehicle involved in the violation.

(2) The law enforcement officer shall initiate an investigation of the reported violation within ten working days after receiving the report described in subsection (1) of this section by contacting the owner of the motor vehicle involved in the reported violation and requesting the owner to supply information identifying the driver. Failure to investigate within the ten working day period does not prohibit further investigation or prosecution. If, after an investigation, the law enforcement officer is able to identify the driver and has reasonable cause to believe a violation of RCW 46.61.370 has occurred, the law enforcement officer shall prepare a notice of traffic infraction and have it served upon the driver of the vehicle.

Section 3 provides:

The superintendent of the public instruction, in cooperation with at least one school district, shall conduct a pilot program to test the feasibility of using video cameras to identify motorists and vehicles that illegally pass school buses when the bus is loading and unloading students. The superintendent shall report his or her findings to the legislature by December 30, 1992.

COMMUNITY PROTECTION ACT

CHAPTER 45 (HB 2262)

Effective Date: March 26, 1992

Makes a number of amendments to the Community Protection Act of 1992 including an amendment to subsection 1 of RCW 9.94A.155 to provide as follows:

(1) At the earliest possible date, and in no event later than ten days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, release, community placement, work release placement, furlough, or escape about a specific inmate convicted of a violent offense or a sex offense as defined by RCW 9.94A.030, to the following:

(a) The chief of police of the city, if any, in which the inmate will reside or in which placement will be made in a work release program; and

(b) The sheriff of the county in which the inmate will reside or in which placement will be made in a work release program.

The sheriff of the county where the offender was convicted shall be notified if the department does not know where the offender will reside. The department shall notify the state patrol of the release of all sex offenders, and that information shall be placed in the Washington crime information center for dissemination to all law enforcement.

UNLAWFUL CONDUCT IN MUNICIPAL BUS OR STATION

CHAPTER 77 (HB 2516)

Effective Date: June 11, 1992

Amends RCW 9.91.025 in the following manner (shown in bill-draft form to reflect changes):

(1) A person is guilty of unlawful bus conduct if while on or in a municipal transit vehicle as defined by RCW 46.04.355 or in or at a municipal transit station and with knowledge that such conduct is prohibited, he or she:

(a) Except while in or at a municipal transit station, smokes or carries a lighted or smoldering pipe, cigar, or cigarette; or

(b) Discards litter other than in designated receptacles; or

(c) Plays any radio, recorder, or other sound-producing equipment except that nothing herein shall prohibit the use of such equipment when connected to earphones that limit the sound to individual listeners or the use of a communication device by an employee of the owner or operator of the municipal transit vehicle or municipal transit station; or

(d) Spits or expectorates; or

(e) Carries any flammable liquid, explosive, acid, or other article or material likely to cause harm to others except that nothing herein shall prevent a person from carrying a cigarette, cigar, or pipe lighter or carrying a firearm or ammunition in a way that is not otherwise prohibited by law; or

(f) Intentionally disturbs others by engaging in loud or unruly behavior.

(2) For the purpose of this section, "municipal transit station" means all facilities, structures, lands, interest in lands, air rights over lands, and rights of way of all kinds that are owned, leased, held, or used by a public agency for the purpose of providing public transportation services.

(3) Unlawful bus conduct is a misdemeanor.

These changes expand coverage of prohibited conduct to cover conduct in the transit station when out of the bus, except for smoking in the transit station, which continues to be covered under the Clean Indoor Air Act (chapter 70.160 RCW) or by local ordinance in some circumstances.

DOMESTIC VIOLENCE

CHAPTER 111 (SB 6347)

Effective Date: June 11, 1992

The Governor vetoed several sections of this Act. His veto message reads in part:

> Sections 2 and 3 of Engrossed Second Substitute Senate Bill No. 6347 require the Office of the Administrator for the Courts to develop standardized forms, instructions, and informational brochures for persons petitioning for protection under the state's Domestic Violence Protection Act. Section 5 requires records of incidents of domestic violence to be submitted to the Washington Association of Sheriffs and Police Chiefs for the purpose of collecting statewide crime data.
>
> Section 13 declares sections 2, 3, and 5, null and void if funding is not provided in the omnibus appropriations act referencing these sections by number.
>
> Although funding has not been specifically provided in the 1992 Supplemental Appropriations Act, the Office of the Administrator for the Courts can accomplish the provisions of section 2 within available resources. In order to allow section 2 to go into effect without placing additional burdens on state agencies, I am vetoing section 3, which contains the date for completion, and section 13 which contains the null and void language.
>
> I am further troubled by the lack of funding for the domestic violence incident reporting contained in section 5. The broad coverage of section 5 to include all reports of incidents of domestic violence (rather than just reports of felony incidents) is a cost which cannot be absorbed within the current budget of the Criminal Justice Training Commission. However, because RCW 10.99.030(7) and (8) require law enforcement agencies to maintain records of all domestic violence incidents reported, and to maintain such records identifiable by a specific code, I believe greater cooperation and coordination between law enforcement records of the various state and local jurisdictions is possible.
>
> Many felonies (for which records are kept) characterized as rape, homicide, assault, arson, robbery, burglary, larceny and motor vehicle theft originate as acts of domestic violence. The lack of coordinated documentation tends to de-emphasize the explosion in domestic violence incidents. Failure to document will continue to impair our ability to control, prevent or adequately respond to such violence.
>
> Despite the veto of section 5, I am directing the Office of Financial Management to work toward obtaining funding, through available grants or applicable federal or state funds, to assist the improvement of domestic violence data through

> coordinated reporting of domestic violence incidents pursuant to RCW 10.99.030(7). In the event such funding cannot be found, I encourage the Washington State Association of Sheriffs and Police Chiefs to work with interested groups to develop a request for funding to the 1993 Legislature.
>
> With the exception of sections 3, 5, and 13, Engrossed Second Substitute Senate Bill No. 6347 is approved.

Section 4 amends subsection (3) of RCW 26.50.060, revising it to read as follows:

> (3) In providing relief under this chapter, the court may realign the designation of the parties as "petitioner" and "respondent" where the court finds that the original petitioner is the abuser and the original respondent is the victim of domestic violence and may issue an ex parte temporary order for protection in accordance with RCW 26.50.070 on behalf of the victim until the victim is able to prepare a petition for an order for protection in accordance with RCW 26.50.030.

Section 6 directs DSHS to act as lead agency in conjunction with other agencies (including the CJTC) to report on domestic violence training in Washington State.

Section 7 amends the definition of "family or household member" to include:

> [P]ersons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a respondent sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

and to define a new term, "dating relationship", as follows:

> (3) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

Section 8 adds the following new subsections to RCW 26.50.020:

> (2) A person under eighteen years of age who is sixteen years of age or older may seek relief under this chapter and is not required to seek relief by a guardian or next friend.
>
> (3) No guardian or guardian ad litem need be appointed on behalf of a respondent to an action under this chapter who is under eighteen years of age if such respondent is sixteen years of age or older.
>
> (4) The court may, if it deems necessary, appoint a guardian ad litem for a petitioner or respondent who is a party to an action under this chapter.

Sections 9, 10, 11 and 12 amend other sections of chapter 26.50 RCW to clarify that the amendment of RCW 26.50.020 in section 8 of the 1992 Act is not inconsistent with other

provisions requiring that petitioners in other circumstances be 18 years of age or be represented by a guardian.

This 1992 enactment does not affect the mandatory arrest provision of RCW 10.31.100 which continue to mandate arrest only where the domestic violence perpetrator and victim are both at least 18 years of age.

ANTI-HARASSMENT PETITIONS

CHAPTER 127 (SB 6141)

Effective Date: June 11, 1992

Amends RCW 10.14.160 in the following manner (shown in bill-draft form):

> For the purposes of this chapter an action may be brought in:
>
> (1) ((~~Any~~)) The judicial district of the county in which the alleged acts of unlawful harassment occurred;
>
> (2) ((~~Any~~)) The judicial district of the county where any respondent resides at the time the petition is filed; or
>
> (3) ((~~Any~~)) The judicial district of the county where a respondent may be served if it is the same county or judicial district where a respondent resides.

WSP CRIME LABORATORY

CHAPTER 129 (SB 6055)

Effective Date: June 11, 1992

Adds the following two sections to chapter 43.43 RCW:

SECTION 1 (CERTIFIED COPIES OF REPORTS)

> (1) In all prosecutions involving the analysis of a controlled substance or a sample of a controlled substance by the crime laboratory system of the state patrol, a certified copy of the analytical report signed by the supervisor of the state patrol's crime laboratory or the forensic scientist conducting the analysis is prima facie evidence of the results of the analytical findings.
>
> (2) The defendant or a prosecutor may subpoena the forensic scientist who conducted the analysis of the substance to testify at the preliminary hearing and trial of the issue at no cost to the defendant, if the subpoena is issued at least ten days prior to the trial date.

SECTION 2 (ASSESSMENT OF CRIME LAB FEE)

> (1) When a person has been adjudged guilty of violating any criminal statute of this state and a crime laboratory analysis was performed by a state crime laboratory, in

addition to any other disposition, penalty, or fine imposed, the court shall levy a crime laboratory analysis fee of one hundred dollars for each offense for which the person was convicted. Upon a verified petition by the person assessed the fee, the court may suspend payment of all or part of the fee if it finds that the person does not have the ability to pay the fee.

(2) When a minor has been adjudicated a juvenile offender for an offense which, if committed by an adult, would constitute a violation of any criminal statute of this state and a crime laboratory analysis was performed, in addition to any other disposition imposed, the court shall assess a crime laboratory analysis fee of one hundred dollars for each adjudication. Upon a verified petition by a minor assessed the fee, the court may suspend payment of all or part of the fee it finds that the minor does not have the ability to pay the fee.

(3) All crime laboratory analysis fees assessed under this section shall be collected by the clerk of the court and forwarded to the state general fund, to be used only for crime laboratories. The clerk may retain five dollars to defray the costs of collecting the fees.

PUBLIC RECORDS, OPEN GOVERNMENT

CHAPTER 139 (HB 2876)

Effective Date: June 11, 1992

Amends RCW 42.17.020 of the Public Records Act to add the following list of items to the definition of "writing": "motion picture, film and video recordings," "diskettes" and "sound recordings", as well as "existing data compilations from which information may be obtained or translated."

Adds a new section to chapter 42.17 reading:

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. The public records subdivision of this chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy.

Adds a new subsection to RCW 42.17.260 reading:

(2) For informational purposes, each agency shall publish and maintain a current list containing every law, other than those listed in this chapter, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.

Adds to RCW 42.17.290 the following:

If a public record request is made at a time when such record exists but is

scheduled for destruction in the near future, the agency shall retain possession of the record, and may not destroy or erase the record until the request is resolved.

Amends RCW 42.17.310(1)(e) adding a new public records exemption as follows (bill-draft form):

(e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time ((~~the~~)) a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

Amends RCW 42.17.310(1) adding a new public records exemption as follows:

(cc) Information that identifies a person who, while an agency employee: (i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

Amends 42.17.320 to add the following details to the existing requirement for a "prompt" response to a public records request.

Within five business days of receiving a public record request, an agency must respond by either (1) providing the record; (2) acknowledging that the agency has received the request and providing a reasonable estimate of the time the agency will require to respond to the request; or (3) denying the public record request. Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, an agency may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the agency need not respond to it.

Amends RCW 42.17.340 by: (i) adding a subsection reading as follows:

(2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

(ii) providing that hearing may be based solely on affidavits, (iii) authorizing a hearing on the promptness issue, and (iv) authorizing penalties for delay from $5 to $100 per day.

The Attorney General is directed to provide a pamphlet explaining the public records act and a

new section is added to chapter 42.17 providing:

> Whenever a state agency concludes that a public record is exempt from disclosure and denies a person opportunity to inspect or copy a public record for that reason, the person may request the attorney general to review the matter. The attorney general shall provide the person with his or her written opinion on whether the record is exempt.
>
> Nothing in this section shall be deemed to establish an attorney-client relationship between the attorney general and a person making a request under this section.

Finally, the Legislature directs a further examination of laws relating to public records and open public meetings. The joint select committee on open government will report back to the Legislature by January 1, 1993.

COURT ORDERS FOR PROTECTION -- DVPA AND ANTI-HARASSMENT

CHAPTER 143 (HB 2745)

Effective Date: June 11, 1992

Among other things, amends and adds new sections to chapters 26.50 RCW (DVPA) and 10.14 RCW (civil anti-harassment) allowing "service by publication" as opposed to "personal service" under certain circumstances.

A new section is added to chapter 26.50 reading as follows:

> (1) When the court issues an ex parte order pursuant to RCW 26.50.0070 or an order of protection ordered issued pursuant to RCW 26.50.060, the court shall advise the petitioner that the respondent may not be subjected to the penalties set forth in RCW 26.50.110 for a violation of the order unless the respondent knows of the order.
>
> (2) When a peace officer investigates a report of an alleged violation of an order for protection issued under this chapter the officer shall attempt to determine whether the respondent knew of the existence of the protection order. If the officer determines that the respondent did not or probably did not know about the protection order, the officer shall make reasonable efforts to obtain a copy of the protection order and serve it on the respondent during the investigation.

A new section is added to 10.14 reading as follows:

> (1) When the court issues an order of protection pursuant to RCW 10.14.080, the court shall advise the petitioner that the respondent may not be subjected to the penalties set forth in RCW 10.14.120 and 10.14.170 for a violation of the order unless the respondent knows of the order.
>
> (2) When a peace officer investigates a report of an alleged violation of an order for protection issued under this chapter the officer shall attempt to determine whether the respondent knew of the existence of the protection order. If the officer determines that the respondent did not or probably did not know about the

protection order, the officer shall make reasonable efforts to obtain a copy of the protection order and serve it on the respondent during the investigation.

ASSAULT OF A CHILD -- THREE DEGREES

CHAPTER 145 (SB 6104)

Effective Date: June 11, 1992

Adds three new sections to chapter 9A.36 RCW, creating the new crime of "assault of a child" with three degrees:

SECTION 1

(1) A person eighteen years of age or older is guilty of the crime of assault of a child in the first degree if the child is under the age of thirteen and the person:

(a) Commits the crime of assault in the first degree, as defined in RCW 9A.36.011, against the child; or

(b) Intentionally assaults the child and either:

(i) Recklessly inflicts great bodily harm; or

(ii) Causes substantial bodily harm, and the person has previously engaged in a pattern or practice either of (A) assaulting the child which has resulted in bodily harm that is greater than transient physical pain or minor temporary marks, or (B) causing the child physical pain or agony that is equivalent to that produced by torture.

(2) Assault of a child in the first degree is a class A felony.

SECTION 2

(1) A person eighteen years of age or older is guilty of the crime of assault of a child in the second degree is the child is under the age of thirteen and the person:

(a) Commits the crime of assault in the second degree, as defined in RCW 9A.36.021, against a child; or

(b) Intentionally assaults the child and causes bodily harm that is greater than transient physical pain or minor temporary marks, and the person has previously engaged in a pattern or practice either of (i) assaulting the child which has resulted in bodily harm that is greater than transient pain or minor temporary marks, or (ii) causing the child physical pain or agony that is equivalent to that produced by torture.

(2) Assault of a child in the second degree is a class B felony.

SECTION 3

> (1) A person eighteen years of age or older is guilty of the crime of assault of a child in the third degree if the child is under the age of thirteen and the person commits the crime of assault in the third degree as defined in RCW 9A.36.031(1)(d) or (f) against the child.
>
> (2) Assault of a child in the third degree is a class C felony.

Also amends various adult sentencing and juvenile sentencing laws to incorporate enhanced penalties for these new crimes.

SHERIFF'S FEES AND COSTS

CHAPTER 164 (HB 2766)

Effective Date: June 11, 1992

Amends RCW 36.18.040 to increase the fees which may be charged by sheriffs for specified official services. Also adds authorization under .040 to charge for notarizing, fingerprinting for noncriminal purposes, mailing, internal criminal history records checks, and certain reproduction costs. Addresses fees incurred in response to private litigation. Declares that a county legislative authority may set different fee amounts than those listed under RCW 36.18.040 "to cover the costs of administration and operation."

CCW PERMITS

CHAPTER 168 (HB 2373)

Effective Date: June 11, 1992

Amends RCW 9.41.070 to provide ineligibility for a CCW permit where a person:

> (g) Has been convicted of any of the following offenses: Assault in the third degree, indecent liberties, malicious mischief in the first degree, possession of stolen property in the first or second degree, or theft in the first or second degree. Any person who becomes ineligible for a concealed pistol permit as a result of a conviction for a crime listed in this subsection (1)(g) and then successfully completes all terms of his or her sentence, as evidenced by a certificate of discharge issued under RCW 9.94A.220 in the case of a sentence under chapter 9.94A RCW, and has not again been convicted of any crime and is not under indictment for any crime, may, one year or longer after such successful sentence completion, petition the district court for a declaration that the person is no longer ineligible for a concealed pistol permit under this subsection (1)(g).

Another amendment to RCW 9.41.070 provides as follows:

> (2) Any person whose firearms rights have been restricted and who has been granted relief from disabilities by the secretary of the treasury under 18 U.S.C. Sec. 925(c) or who is exempt under 18 U.S.C. Sec. 921(a)(20)**[Federal Laws -- LED Ed.]** shall have his or her right to acquire, receive, transfer, ship, transport, carry, and possess firearms in accordance with Washington state law restored.

and another amendment to this section provides that revocation of a CCW permit is effected by "the issuing authority," not by DOL.

RCW 9.41.040 is amended by deleting current language relating to persons who have been subjected to mental illness commitment and adding the following language:

> (6)(a) A person who has been committed by court order for treatment of mental illness under RCW 71.05.320 or chapter 10.77 RCW, or equivalent statutes of another jurisdiction, may not possess, in any manner, a firearm as defined in RCW 9.41.010.
>
> (b) At the time of commitment, the court shall specifically state to the person under (a) of this subsection and give the person notice in writing that the person is barred from possession of firearms.
>
> (c) The secretary of social and health services shall develop appropriate rules to create an approval process under this subsection. The rules must provide for the immediate restoration of the right to possess a firearm upon a showing in a court of competent jurisdiction that a person no longer is required to participate in an inpatient or outpatient treatment program, and is no longer required to take medication to treat any condition related to the commitment. Unlawful possession of a firearm under this subsection shall be punished as a class C felony under chapter 9A.20 RCW.

RCW 71.05.240 is amended to provide that persons involuntarily committed for mental disorders shall be informed in writing by the court that they are barred from the possession of firearms.

STALKING AS CRIMINAL HARASSMENT; THREATS TO KILL AS FELONIES

CHAPTER 186 (HB 2702)

Effective Date: June 11, 1992

Adds a new section to chapter 9A.46 RCW reading as follows:

> (1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:
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> (a) He or she intentionally and repeatedly follows another person to that person's home, school, place of employment,business, or any other location, or follows the person while the person is in transit between locations; and
>
> (b) The person being followed is intimidated, harassed, or placed in fear that the stalker intends to injure the person or property of the person being followed or of another person. The feeling of fear, intimidation, or harassment must be one that a reasonable person in the same situation would experience under all the circumstances; and
>
> (c) The stalker either:
>
> (i) Intends to frighten, intimidate, or harass the person being followed; or

(ii) Knows or reasonably should know that the person being followed is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

(2)(a) It is not a defense to the crime of stalking under subsection (1)(c)(i) of this section that the stalker was not given actual notice that the person being followed did not want the stalker to contact or follow the person; and

(b) It is not a defense to the crime of stalking under subsection (1)(c)(ii) of this section that the stalker did not intend to frighten, intimidate, or harass the person being followed.

(3) It shall be a defense to the crime of stalking that the defendant is a licensed private detective acting within the capacity of his or her license as provided by chapter 18.165 RCW.

(4) Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitutes prima facie evidence that the stalker intends to intimidate or harass the person.

(5) A person who stalks another person is guilty of a gross misdemeanor except that the person is guilty of a class C felony if any of the following applies: (a) The stalker has previously been convicted in this state or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a no-contact order or no-harassment order; (b) the person violates a court order issued pursuant to RCW 9A.46.040 protecting the person being stalked; or (c) the stalker has previously been convicted of a gross misdemeanor or felony stalking offense under this section for stalking another person.

Amends RCW 9A.46.020 (criminal harassment) and RCW 9.61.230 (telephone harassment) to make it a felony under each of the statutes to harass a person with intent to harass, intimidate, torment or embarrass another person, where the harassing person threatens "to kill the person threatened or any other person."

LANDLORDS' CLAIMS ON TENANTS' PROPERTY UNDER UCSA; PROCEEDS DISTRIBUTION

CHAPTER 211 (HB 2501)

Effective Date: June 11, 1992

Strikes most of the language in subsection (2) of RCW 69.50.505 relating to distribution of proceeds from forfeitures under the Uniform Controlled Substances Act and inserts the following new distribution and record-keeping provisions (interpretation of this amendatory language to be provided in an LED later this year):

(g)(1) When property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the

amount of proceeds realized from disposition of the property.

(2) Each seizing agency shall retain records of forfeited property for at least seven years.

(3) Each seizing agency shall file a report including a copy of the records of forfeited property with the state treasurer each calendar quarter.

(4) The quarterly report need not include a record of forfeited property that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(h)(i) by January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the drug enforcement and education account under RCW 69.50.520.

(2) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages under subsection (n) of this section.

(3) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index,such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(i) Forfeited property and net proceeds not required to be paid to the state treasurer shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of controlled substances related law enforcement activity. Money retained under this section may be not be used to supplant pre-existing funding sources.

Adds three new subsections to RCW 69.50.505 reading as follows (interpretation of this amendatory language to be provided in an LED later this year):

(n) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (f)(2) of this section, only if:

(1) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

(2) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly

caused by a law enforcement officer prior to asserting a claim under the provisions of this section;

(i) Only if the funds applied under (2) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose authority the law enforcement agency operates within thirty days after the search;

(ii) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency must notify the landlord of the status of the claim by the end of the thirty-day period. Nothing in this section requires the claim to be paid by the end of the sixty-day or thirty-day period.

(3) For any claim filed under (2) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

(i) Knew or consented to actions of the tenant in violation of this chapter or chapter 69.41 or 69.52 RCW; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency under RCW 59.18.075, within seven days of receipt of notification of the illegal activity.

(o) The landlord's claim for damages under subsection (n) of this section may not include a claim for loss of business and is limited to:

(1) Damage to tangible property and clean-up costs;

(2) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

(3) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (f)(2) of this section; and

(4) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (h)(2) of this section.

(p) Subsections (n) and (o) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (n) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency.

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NEXT MONTH

In the July LED we hope to complete our review of 1992 Washington legislation of interest by digesting the following: Chapter 32 (failure to comply recodified), Chapter 55 (criminal justice account), Chapter 99 (warrant officers), Chapter 159 (fingerprinting and checking records of shool employees), Chapter 178 (defenses to charges of sexual exploitation of children), Chapter 188 (confidentiality of child crime victims' ID), Chapter 203 (homicide victims' family counseling), Chapter 205 (juvenile adjudications as firearms law disqualifiers), Chapter 210 (money laundering), and Chapter 225 (deputy sheriffs as lawyers).

We also plan to digest several recent appellate court decisions. At LED deadline, we had a backlog of approximately 30 appellate court decisions. While none of these decisions would qualify as a landmark decision, we don't like to get this far behind. We expect to get back on pace by the fall.

Finally, we plan to further discuss the Miranda trigger issues which we discussed in the May LED at 2-3. We remain convinced that the Miranda warnings requirement is triggered solely by (1) interrogation plus (2) that level of custody which, objectively viewed, is the functional equivalent of arrest.

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The Law Enforcement Digest is edited by Assistant Attorney General, John Wasberg, Office of the Attorney General. Editorial comment and analysis of statutes and court decisions expresses the thinking of the writer and does not necessarily reflect the opinion of the Office of the Attorney General or the Washington State Criminal Justice Training Commission. The LED is published as a research source only and does not purport to furnish legal advice.